



DEPARTMENT OF VETERANS AFFAIRS

8320-01

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Privacy Act of 1974, at 5 United States Code (U.S.C.) 552a(e)(4), requires that all agencies publish in the Federal Register a notice of the existence and character of their records. The Department of Veterans Affairs (VA) gives notice that it is amending the system of records entitled “Accreditation Records–VA” (01VA022) as set forth in the Federal Register, 40 FR 38095, August 26, 1975; and amended in 47 FR 1460, January 13, 1982, 54 FR 30969, July 25, 1989, 59 FR 47377, September 15, 1994, 67 FR 54529, August 22, 2002, and 74 FR 23247, May 18, 2009. VA is amending the system notice by adding new routine uses 15, 16, and 17.

DATES: Comments on the proposed amendments to this system of records must be received no later than [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If no public comments are received by this date, the amendments will become effective on [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through

<http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW.,

Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Ken Lee (022D), Deputy Assistant General Counsel, Professional Staff Group II, Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7699.

SUPPLEMENTARY INFORMATION: By statute, VA is required to ensure that, in presenting their claims, VA claimants have access to competent representation by individuals of good character and reputation. 38 U.S.C. 5904(a). Therefore, individuals wishing to represent claimants before VA must be authorized to do so. 38 CFR 14.626. This authorization is known as accreditation. The System of Records “Accreditation Records–VA” (01VA022) contains VA’s accreditation records.

I. Applicants for VA Accreditation

VA accredits claims agents, attorneys, and representatives of recognized veterans service organizations to ensure that claimants for VA benefits have responsible, qualified representation before the Department. 38 CFR 14.626. An

individual seeking VA accreditation as an attorney or claims agent is required to establish his or her fitness to practice before VA, which means that “he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before [VA].” 38 CFR 14.629(b)(2). With this in mind, VA requires that an applicant for accreditation as an attorney or claims agent provide VA with information regarding his or her background, including prior criminal acts, pending criminal charges, and instances of professional misconduct. 38 CFR 14.629(b).

VA acknowledges that an applicant for VA accreditation may choose not to be entirely forthcoming and truthful regarding matters that may call into question his or her fitness to practice before VA. Therefore, it may be necessary for VA to independently verify or obtain certain background information. Such verification often takes the form of a criminal background check or other similar inquiry to a third party.

In order to comply with the Privacy Act of 1974, rather than securing background checks from law enforcement agencies or other third party sources directly, VA’s current practice is to request that the applicant provide copies of background checks from Federal and state law enforcement authorities. Having to make such requests delays the processing of applications for accreditation, while not having the information at all impedes VA’s efforts to ensure that claimants receive appropriate representation. In order to facilitate the use of third parties or entities to conduct background checks, VA requires the ability to release information from its accreditation system of records to these third parties and entities.

II. Accredited and Non-Accredited Individuals

The requirement of demonstrating fitness to practice before VA is ongoing and an individual's accreditation, once granted, is subject to suspension or cancellation if the VA General Counsel determines, by clear and convincing evidence, that an accredited individual is involved in any unlawful, unprofessional, or unethical practice that adversely affects the individual's fitness to practice before VA. 38 CFR 14.633(c). Moreover, an individual who is not accredited by VA cannot lawfully assist claimants with their claims for VA benefits.

Under current law, "upon [VA's] receipt of credible written information from any source indicating improper conduct, or incompetence [of an accredited individual], the Assistant General Counsel of jurisdiction shall inform the subject of the allegations about the specific law, regulation, or policy alleged to have been violated or the nature of the alleged incompetence and the source of the complaint, and shall provide the subject with the opportunity to respond." 38 CFR 14.633(e). If the accredited individual responds to the allegations contained in the complaint, VA may provide to the complainant information in the accredited individual's response to facilitate resolution of the issues. VA often uses similar procedures with regard to complaints concerning the legality of representation provided to a VA claimant by an individual, acting alone or as part of an organization, who is not accredited by VA.

In order to comply with the Privacy Act of 1974, upon receipt of a response from the subject of the allegation, VA must send a release form to that individual and wait for it to be completed and returned before VA can inform the complainant of information

contained in the response and proceed with resolution of the complaint. If the individual chooses not to complete the release form, VA may be precluded from disclosing the individual's response to the complainant for reply. Therefore, individuals who are the subject of a complaint would lack incentive to complete the release form and return it to VA, which hinders VA's ability to obtain all information necessary in deciding whether to initiate proceedings to suspend or cancel an individual's accreditation pursuant to 38 CFR 14.633 or to determine whether to refer a matter involving a possible violation of the law to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation.

Additional Routine Uses

Accordingly, to ensure that VA claimants receive responsible, quality representation before the Department, VA is adding routine uses 15,16, and 17 to allow the disclosure of information in this system (1) to third parties for the purpose of conducting background checks or obtaining other relevant information regarding the qualifications of applicants for accreditation; (2) to individuals who submit a credible written complaint about an accredited individual's fitness to represent VA claimants; or (3) to individuals who submit a credible written complaint about the legality of representation provided to a VA claimant by a non-accredited individual.

Release of information from these records, pursuant to routine uses, will be made only in accordance with the provisions of the Privacy Act of 1974. The Privacy Act of 1974 permits agencies to disclose information about individuals, without their consent, for a routine use when the information will be used for a purpose for which the

information was collected. VA has determined that the disclosure of information for the above purposes in the proposed amendment to routine uses is a proper and necessary use of the information collected by the system "Accreditation Records–VA."

The report of intent to amend the system of records and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677, December 12, 2000).

Approved: November 26, 2013.

Jose D. Riojas, Chief of Staff,
Department of Veterans Affairs.

01VA022

SYSTEM NAME:

Accreditation Records–VA

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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15. VA may disclose the name, address, date of birth, and any other identifying information of any prospective, present, or former accredited representative, claims agent, attorney, or individual providing representation on a particular claim to a third-party individual or entity for the purpose of conducting a background check or to obtain information about the individual's present or past conduct, activities, licenses, or other information that may have a bearing on a determination of the individual's fitness to represent or to continue representing claimants before VA.

16. VA may disclose the name and address of any prospective, present, or former accredited representative, claims agent, attorney, or individual providing representation on a particular claim who is the subject of correspondence, an investigation, or a proceeding relating to his or her fitness to represent claimants for VA benefits, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual or to VA's possible denial, cancellation, suspension, or termination of the individual's VA accreditation, or to both,

where applicable, to an individual or entity from whom VA has received a credible written complaint about the accredited individual's fitness to represent VA claimants.

17. VA may disclose the name and address of any individual (acting alone or as part of an organization) not accredited by VA who is the subject of correspondence, an investigation, or proceeding relating to the legality of representation provided by such individual to claimants for VA benefits, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual to an individual or entity from whom VA has received a credible written complaint about the legality of representation provided by the non-accredited individual.

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